

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 15, 2020

SEAN F. McAVOY, CLERK

BARBARA V.,

No. 2:19-CV-0157-JTR

Plaintiff,

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 12, 13. Attorney Christopher H. Dellert represents Barbara V. (Plaintiff); Special Assistant United States Attorney Alexis Toma represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

In September 2015, Plaintiff filed applications for Supplemental Security Income and Disability Insurance Benefits, alleging disability since October 12, 2013,¹ due to spinal stenosis; degenerative lumbar disks; arthritis throughout her back, shoulders, and neck; and ongoing complications post cholecystectomy. Tr. 204, 211, 245. The applications were denied initially and upon reconsideration.

¹Plaintiff later amended her alleged onset date to August 31, 2015, the date she stopped working. Tr. 15, 43-44, 314.

1 Administrative Law Judge (ALJ) Larry Kennedy held a hearing on August
2 21, 2017, Tr. 37-76, and issued an unfavorable decision on March 5, 2018, Tr. 15-
3 31. The Appeals Council denied Plaintiff's request for review on March 18, 2019.
4 Tr. 1-6. The ALJ's March 2018 decision thus became the final decision of the
5 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §
6 405(g). Plaintiff filed this action for judicial review on May 10, 2019. ECF No. 1.

7 **STATEMENT OF FACTS**

8 The facts of the case are set forth in the administrative hearing transcript, the
9 ALJ's decision, and the briefs of the parties. They are only briefly summarized
10 here.

11 Plaintiff was born on June 30, 1963, Tr. 204, and was 52 years old on the
12 amended alleged disability onset date, August 31, 2015. She completed two years
13 of college and has reported past work as a waitress, bartender and bar manager.
14 Tr. 65-67, 246. Plaintiff's disability report indicates she stopped working on
15 August 31, 2015, because of her condition. Tr. 245.

16 Plaintiff testified at the administrative hearing held on August 21, 2017, she
17 lived in a home with her three grandchildren, ages 11, eight and three; had
18 maintained custody over these children for the past four years; and, at that time,
19 was in the process of adopting the children. Tr. 45-46. She stated that when the
20 three-year-old was an infant, her daughter would help care for him during the day
21 and part of the night because Plaintiff was still working. Tr. 51. However, at the
22 time of the hearing, Plaintiff was the caregiver for the children. Tr. 53.

23 Plaintiff testified she was unable to work because she could not sit or stand
24 for long periods of time due to pain and had stopped working because of the pain
25 caused by sitting and standing. Tr. 54-55. Plaintiff described the pain as occurring
26 in her back, traveling down her legs, and causing numbness in her feet. Tr. 56. It
27 affected her ability to drive and walk (she reported she would sometimes stumble).
28 Tr. 56. Plaintiff stated she had a valid driver's license and was capable of driving.

1 Tr. 46-47. However, when driving longer distances, Plaintiff stated she needed to
2 stop frequently, for 10 to 15 minutes, to stretch her legs and use the restroom. Tr.
3 47, 49.

4 Plaintiff indicated she was able to walk only about half a city block before
5 needing to rest at least 10 minutes. Tr. 57. She stated she could sit for about 20
6 minutes at a time (sometimes longer) and was able to lift approximately 10 pounds.
7 Tr. 57. She testified her back pain limited her ability to bend and twist and
8 perform daily activities such as doing the laundry. Tr. 61.

9 Plaintiff stated that in addition to her back pain, she experienced shoulder
10 pain, Tr. 58, neck pain, Tr. 62, and headaches, Tr. 62. She also indicated issues
11 with dizziness, feeling light-headed or vertigo. Tr. 63.

12 Plaintiff testified at the August 21, 2017 administrative hearing that she had
13 not been to a doctor, nor received any treatment, in the 10 months preceding the
14 hearing. Tr. 42.

15 STANDARD OF REVIEW

16 The ALJ is responsible for determining credibility, resolving conflicts in
17 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
18 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
19 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
20 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
21 only if it is not supported by substantial evidence or if it is based on legal error.
22 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
23 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
24 1098. Put another way, substantial evidence is such relevant evidence as a
25 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
26 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
27 rational interpretation, the Court may not substitute its judgment for that of the
28 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,

1 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
 2 administrative findings, or if conflicting evidence supports a finding of either
 3 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
 4 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
 5 supported by substantial evidence will be set aside if the proper legal standards
 6 were not applied in weighing the evidence and making the decision. *Browner v.*
 7 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

8 **SEQUENTIAL EVALUATION PROCESS**

9 The Commissioner has established a five-step sequential evaluation process
 10 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
 11 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of
 12 proof rests upon the claimant to establish a prima facie case of entitlement to
 13 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a
 14 claimant establishes that a physical or mental impairment prevents the claimant
 15 from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant
 16 cannot perform past relevant work, the ALJ proceeds to step five, and the burden
 17 shifts to the Commissioner to show (1) the claimant can make an adjustment to
 18 other work; and (2) the claimant can perform specific jobs that exist in the national
 19 economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th
 20 Cir. 2004). If a claimant cannot make an adjustment to other work in the national
 21 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

22 **ADMINISTRATIVE DECISION**

23 On March 5, 2018, the ALJ issued a decision finding Plaintiff was not
 24 disabled as defined in the Social Security Act.

25 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
 26 activity since the amended alleged onset date, August 31, 2015. Tr. 18.

27 At step two, the ALJ determined Plaintiff had the following severe
 28 impairments: cervical, thoracic, and lumbar spine degenerative disc

1 disease/spondylolisthesis/stenosis; bilateral knee degenerative joint disease; and
2 obesity. Tr. 18.

3 At step three, the ALJ found Plaintiff did not have an impairment or
4 combination of impairments that meets or medically equals the severity of one of
5 the listed impairments. Tr. 19.

6 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
7 determined she could perform light work with the following limitations: she could
8 only occasionally stoop, kneel, and crouch and cannot climb, crawl, or balance; she
9 could only frequently reach, handle, and finger; and she would need to avoid
10 concentrated exposure to vibration, pulmonary irritants, heights, and hazards. Tr.
11 20.

12 At step four, the ALJ determined Plaintiff was capable of performing her
13 past relevant work as a bartender and manager, food service, as those jobs are
14 generally performed in the national economy. Tr. 28-29.

15 At step five, the ALJ found in the alternative that based on the testimony of
16 the vocational expert, and considering Plaintiff's age, education, work experience
17 and RFC, Plaintiff could perform other jobs present in significant numbers in the
18 national economy, including the jobs of cafeteria attendant, information clerk, and
19 office helper. Tr. 30-31. The ALJ thus concluded Plaintiff was not under a
20 disability within the meaning of the Social Security Act at any time from August
21 31, 2015, through the date of the ALJ's decision, March 5, 2018. Tr. 31.

22 ISSUES

23 The question presented is whether substantial evidence supports the ALJ's
24 decision denying benefits and, if so, whether that decision is based on proper legal
25 standards.

26 Plaintiff raises the following issues for the Court's review: (1) whether the
27 ALJ erred in finding Plaintiff's benign positional vertigo was not a severe
28 impairment and not accommodating any limitations related to this impairment in

1 the residual functional capacity assessment; and (2) whether the ALJ erred in his
2 consideration of Plaintiff's subjective allegations. ECF No. 12 at 2.

3 DISCUSSION

4 A. Step Two

5 Plaintiff contends the ALJ erred at step two by failing to find Plaintiff's
6 vertigo was a severe impairment and by failing to accommodate any limitation
7 resulting from vertigo into the RFC assessment. ECF No. 12 at 4.

8 Plaintiff has the burden of proving she has a severe impairment at step two
9 of the sequential evaluation process. 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. §
10 423(d)(1)(A), 416.912. In order to meet this burden, Plaintiff must furnish medical
11 and other evidence that shows she has a severe impairment. 20 C.F.R. §
12 416.912(a). Step two is "a de minimis screening device [used] to dispose of
13 groundless claims," *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996), and an
14 ALJ may find a claimant lacks a medically severe impairment or combination of
15 impairments only when this conclusion is "clearly established by medical
16 evidence." S.S.R. 85-28; *see Webb v. Barnhart*, 433 F.3d 683, 686-687 (9th Cir.
17 2005). Applying the normal standard of review to the requirements of step two,
18 the Court must determine whether the ALJ had substantial evidence to find the
19 medical evidence clearly established Plaintiff did not have a severe impairment.
20 *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) ("Despite the deference
21 usually accorded to the Secretary's application of regulations, numerous appellate
22 courts have imposed a narrow construction upon the severity regulation applied
23 here."); *Webb*, 433 F.3d at 687.

24 As discussed by the ALJ, Tr. 18-19, while there are medical records
25 documenting Plaintiff's vertigo complaints in 2016, Plaintiff displayed minimal
26 symptoms and normal neurological findings upon examination, Tr. 404, 416, 418,
27 419, 420, except with respect to a face touch deficit, Tr. 404, and involuntary eye
28 movement, Tr. 416. A CT scan and blood work were normal, Tr. 416, and a brain

1 MRI was unremarkable, Tr. 419, 429. It was initially noted her dizziness improved
2 with meclizine and Valium, Tr. 420; however, Plaintiff later reported the
3 medications had not reduced her vertigo symptoms, Tr. 430. On October 15, 2016,
4 John W. Roberts, M.D., at Virginia Mason Medical Center, explained that Plaintiff
5 appeared to have benign positional vertigo, which often self corrects, and that
6 vestibular rehabilitation could hasten her recovery. Tr. 431. She was prescribed
7 vestibular rehabilitation, hopefully with a physical therapist in her local
8 community, and a neurologic follow-up if her symptoms did not improve. Tr. 431.
9 As indicated by the ALJ, Plaintiff did not seek any further treatment for vertigo,
10 either with rehabilitation or a neurologist. Tr. 19.

11 The Court notes at the outset that Plaintiff did not assert vertigo as a medical
12 condition limiting her ability to work in her disability application, Tr. 245, and
13 Plaintiff only first alleged vertigo in October 2016, ECF No. 12 at 4, more than one
14 year after Plaintiff's August 31, 2015 alleged onset date. Moreover, there is no
15 indication in the record that her alleged vertigo met the durational requirements of
16 the Social Security Act. *See* 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A) (an
17 individual shall be considered disabled if she has an impairment which can be
18 expected to result in death or which has lasted or can be expected to last for a
19 continuous period of not less than 12 months). In any event, the Court finds the
20 ALJ correctly determined the record reflects essentially normal examination
21 findings and a lack of follow-up by Plaintiff, suggesting the alleged symptoms of
22 vertigo either improved or did not significantly limit her functioning.

23 Furthermore, even if the Court were to find the ALJ erred by concluding
24 vertigo was a non-severe impairment in this case, the ALJ specifically accounted
25 for vertigo symptoms in the ultimate RFC assessment by precluding Plaintiff from
26 work involving any climbing or balancing, as well as work requiring concentrated
27 exposure to hazards. Tr. 19. Thus, contrary to Plaintiff's argument, ECF No. 12 at
28 9-10; ECF No. 14 at 5, the ALJ considered the impact of Plaintiff's alleged vertigo

1 at steps four and five of the sequential evaluation process. Any error the ALJ may
2 have made in failing to include this impairment at step two was harmless. *See*
3 *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (ALJ's failure to include
4 impairment as severe at step two was harmless error where ALJ considered the
5 limitations posed by the impairment at step four); *Johnson v. Shalala*, 60 F.3d
6 1428, 1436 n. 9 (9th Cir. 1995) (an error is harmless when the correction of that
7 error would not alter the result); *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
8 2005) (an ALJ's decision will not be reversed for errors that are harmless).

9 **B. Plaintiff's Symptom Testimony**

10 Plaintiff next contends the ALJ erred by failing to give specific, clear and
11 convincing reasons for rejecting her symptom testimony. ECF No. 12 at 10-17;
12 ECF No. 14 at 6-7.

13 It is the province of the ALJ to make credibility determinations. *Andrews*,
14 53 F.3d at 1039. However, the ALJ's findings must be supported by specific
15 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
16 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
17 testimony must be "specific, clear and convincing." *Lester v. Chater*, 81 F.3d 821,
18 834 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must
19 identify what testimony is not credible and what evidence undermines the
20 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,
21 918 (9th Cir. 1993).

22 In this case, the ALJ found Plaintiff's medically determinable impairments
23 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's
24 statements concerning the intensity, persistence and limiting effects of those
25 symptoms were not entirely consistent with the medical and other evidence of
26 record. Tr. 21-22.

27 The ALJ first determined Plaintiff's overall record showed generally mild
28 objective findings, inconsistent with her allegations. Tr. 22.

1 A lack of supporting objective medical evidence is a factor which may be
2 considered in evaluating an individual's credibility, provided it is not the sole
3 factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991) (Once a claimant
4 produces objective medical evidence of an underlying impairment, an adjudicator
5 may not reject the claimant's subjective complaints based solely on a lack of
6 objective medical evidence to fully corroborate the alleged severity of pain.);
7 *Robbins v. Soc. Sec. Admin.*, 466 F3d 880, 883 (9th Cir. 2006) (An ALJ may not
8 make a negative credibility finding "solely because" the claimant's symptom
9 testimony "is not substantiated affirmatively by objective medical evidence.").

10 The ALJ noted Plaintiff had a history of back pain that predated her alleged
11 onset date. Tr. 22, 326-328. However, as indicated by the ALJ, contemporaneous
12 physical examination findings showed normal gait in and around the exam room
13 with normal stride and cadence; normal gross manual muscle strength testing in all
14 four extremities; and normal dynamic strength for toe walk, heel walk, reverse
15 squat and double-foot toe raise. Tr. 22, 332. A physical examination in March
16 2015 was likewise largely normal, with findings of full active motion at the
17 bilateral upper and lower extremities with supple motion, as well as normal
18 cervical and lumbar range of motion. Tr. 22, 337. Plaintiff had normal heel and
19 toe walk bilaterally; normal tandem gait; largely intact sensory and motor function;
20 and negative straight leg raising. Tr. 22, 337-338. It was noted in May 2015 that
21 Plaintiff moved all extremities independently, had no gross gait abnormalities, and
22 had only a mildly ataxic gait. Tr. 22, 342, 344.

23 Since the amended alleged onset date, Plaintiff reported neck pain with
24 numbness in her fingers; however, a contemporaneous cervical spine MRI revealed
25 only mild central canal stenosis at C5-C6 and C6-C7, and Plaintiff was noted to
26 have only minimal disc bulge without significant central canal stenosis at C7-T1.
27 Tr. 22, 394-395. An MRI of the thoracic spine showed ongoing degeneration, but
28 normal alignment of the thoracic spine and signal intensities within the thoracic

1 spinal cord. Tr. 22-23, 391-392. In May 2016, Plaintiff was noted to be
2 ambulating with a stiff spine and to have antalgia, but the antalgia was noted to be
3 only mild in nature and, in contrast to earlier findings, she had no ataxia. Tr. 23,
4 474. In October 2016, Plaintiff presented at the Virginia Mason Medical Center
5 for consultation and, upon examination, had diffuse tenderness throughout her
6 paravertebral area in the low back, sacroiliac joints, sciatic notches, and greater
7 trochanters, as well as range of motion about 50 percent of normal with slow,
8 cautious gait. Tr. 23, 427. However, she had no pain on straight leg raising or
9 Patrick maneuver, she was noted to have normal strength, and she was noted to
10 display few, if any, radicular symptoms. Tr. 23, 427-428.

11 State agency reviewing physician Mark Magdaleno, M.D., opined on
12 September 29, 2015, that Plaintiff could lift and/or carry 20 pounds occasionally
13 and 10 pounds frequently; stand and/or walk for a total of about six hours in an
14 eight-hour workday; and push and/or pull on an unlimited basis within the
15 parameters set forth for lifting and/or carrying. Tr. 25, 81-83. Dr. Magdaleno also
16 assessed postural limitations (only frequently climb ramps/stairs, stoop, kneel,
17 crouch, and crawl and only occasionally climb ladders/ropes/scaffolds) and
18 environmental restrictions (avoid concentrated exposure to pulmonary irritants and
19 hazards such as machinery and heights). Tr. 25-26, 82-83. State agency reviewing
20 physician James Irwin, M.D., assessed the record on January 20, 2016, and
21 concurred with the limitations found by Dr. Magdaleno.² Tr. 26, 100-102.

22 Based on the foregoing, the medical record does not align with Plaintiff's
23 allegations of completely disabling physical symptoms in this case. Consequently,
24 the ALJ's finding that the objective medical evidence of record is inconsistent with
25 Plaintiff's allegations is supported by substantial evidence.

26
27 ²The ALJ's RFC determination is only slightly more restrictive than the
28 physical capacity assessment of Dr. Magdaleno. See Tr. 20.

1 The ALJ next indicated Plaintiff admitted she had received no medical
2 treatment whatsoever during the 10 months prior to the administrative hearing. Tr.
3 23, 42.

4 An ALJ properly relies upon “unexplained or inadequately explained failure
5 to seek treatment or to follow a prescribed course of treatment” in assessing a
6 claimant’s credibility. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)
7 (quoting *Smolen*, 80 F.3d at 1284); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
8 1989). “[I]f the frequency or extent of the treatment sought by an individual is not
9 comparable with the degree of the individual’s subjective complaints, or if the
10 individual fails to follow prescribed treatment that might improve symptoms, we
11 may find the alleged intensity and persistence of an individual’s symptoms are
12 inconsistent with the overall evidence of record.” S.S.R. 16-3p. Moreover, an
13 “unexplained, or inadequately explained, failure to seek treatment may be the basis
14 for an adverse credibility finding unless one of a ‘number of good reasons for not
15 doing so’ applies.” *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).

16 The ALJ did not thoroughly investigate Plaintiff’s rationale for not seeking
17 treatment during the 10 months prior to the administrative hearing. Nevertheless,
18 although an ALJ has a special duty to develop the record fully and fairly and to
19 ensure that the claimant’s interests are considered, *Tonapetyan v. Halter*, 242 F.3d
20 1144, 1150 (9th Cir. 2001); *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983),
21 the ALJ asked Plaintiff twice about her 10-month break from treatment at the time
22 of the administrative hearing, Tr. 42, and Plaintiff failed to proffer any reasoning
23 or otherwise explain her failure to seek treatment during that 10-month time
24 period. Moreover, Plaintiff’s post-hoc rationalizations³ do not persuade the Court
25

26 ³Plaintiff presently indicates it took her an hour to drive to where therapy
27 was available and being in a car triggered her vertigo and caused back pain. ECF
28 No. 12 at 8. However, as discussed in Section A, Plaintiff’s assertion that vertigo

1 that Plaintiff had a justifiable reason for not seeking medical treatment during a 10-
2 month period of time she asserts she was suffering debilitating symptoms.

3 Plaintiff's lengthy lack of treatment for her alleged symptoms during the
4 relevant time period was a sufficient reason to discount her testimony regarding the
5 severity of her impairments.

6 The ALJ also noted the record reflects a history of noncompliance with
7 recommended treatment. Tr. 23-24.

8 Noncompliance with medical care or unexplained or inadequately explained
9 reasons for failing to seek medical treatment cast doubt on a claimant's subjective
10 complaints. 20 C.F.R. §§ 404.1530, 416.930; *Fair*, 885 F.2d at 603.

11 The fact that Plaintiff failed to comply with the medical treatment prescribed
12 by her physicians; specifically, noncompliance with the conservative course of
13 treatment through physical therapy that was recommended to her by various
14 physicians, Tr. 333, 340, 347 & 513 (recommending physical therapy); 335 (noting
15 Plaintiff "yet to do any real directed physical therapy or treatment"); 345 & 480
16 (Plaintiff reporting she was not able to attend any physical therapy due to her
17 remote location, work and childcare obligations); 427 (noting Plaintiff had only
18 engaged in "some minimal physical therapy"); 512 (noting Plaintiff had been
19 discharged from physical therapy because she had attended only her initial
20 evaluation and had cancelled or no showed for her other scheduled appointments),
21 discounts Plaintiff's claim of disabling pain and limitations.

22 The ALJ additionally suggested Plaintiff was no longer working not due to
23 disabling limitations, but instead because she "ha[d] her hands full taking care of
24 her 3 grandchildren who were under her care." *See* Tr. 25, 456. The inability to

25 _____
26 was a severe impairment is unavailing, and, as discussed directly above, objective
27 medical evidence failed to substantiate Plaintiff's contention of disabling back
28 pain. *Supra*.

1 work due to nondisability factors is another valid basis for rejecting a claimant's
2 credibility. *See Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001) (stating
3 that in making a credibility determination, the ALJ did not err by considering that
4 claimant left his job because he was laid off, rather than because he was injured).
5 The ALJ did not err by mentioning this basis (it appeared Plaintiff stopped working
6 for reasons unrelated to her alleged disabling impairments) for discounting
7 Plaintiff's credibility as well.

8 Finally, the ALJ concluded Plaintiff's daily activities were inconsistent with
9 greater limitations than as assessed by the ALJ. Tr. 24-25.

10 It is well-established that the nature of daily activities may be considered
11 when evaluating credibility. *Fair*, 885 F.2d at 603. For daily activities to discount
12 subjective symptom testimony, the activities do not need to be equivalent to full-
13 time work; it is sufficient that a claimant's activities "contradict claims of a totally
14 debilitating impairment." *See Molina v. Astrue*, 674 F.3d 1104, 1112-1113 (9th
15 Cir. 2012). A claimant, however, need not be utterly incapacitated to receive
16 disability benefits, and completion of certain routine activities is insufficient to
17 discount subjective symptom testimony. *Molina*, 674 F.3d at 1112-1113 (noting
18 that a "claimant need not vegetate in a dark room in order to be eligible for
19 benefits" (quotation marks omitted)); *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th
20 Cir. 2004) ("One does not need to be 'utterly incapacitated' in order to be
21 disabled."); *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) ("This court
22 has repeatedly asserted that the mere fact that a plaintiff has carried on certain
23 daily activities, such as grocery shopping, driving a car, or limited walking for
24 exercise, does not in any way detract from her credibility as to her overall
25 disability. One does not need to be 'utterly incapacitated' in order to be disabled."
26 (quoting *Fair*, 885 F.2d at 603)).

27 ///

28 ///

1 Here, the ALJ specifically identified Plaintiff's ability to raise her three
2 young grandchildren as inconsistent with her alleged inability to engage in any
3 work activity whatsoever. Tr. 24.

4 The record reflects Plaintiff was significantly active in terms of childcare
5 responsibilities throughout the relevant time period in this matter. *See* Tr. 345
6 (pre-onset date report that Plaintiff was "quite busy with the full-time care of her
7 grandchildren"); 446 (Plaintiff's report that she is "quite active taking care of her
8 grandchildren including a [toddler] who she continues to pick up frequently"); 456
9 (Plaintiff's report that she was "no longer working because she 'has her hands full'
10 taking care of her 3 grandchildren who are under her care"); 473 (Plaintiff's report
11 that she had been "mostly preoccupied with the care of her three young
12 grandchildren"); 478 (Plaintiff's report that she is "responsible for her 3
13 grandchildren whose mother is unable to care for them"); 549 (November 2016
14 letter by Micaela Godzich, M.D., indicating it was her medical opinion Plaintiff
15 was "fully capable of physically and emotionally providing excellent care for her
16 three grandchildren").

17 It appears reasonable for the ALJ to have concluded Plaintiff's childcare
18 activities were inconsistent with her allegations of totally disabling symptoms and
19 thus detracted from her overall credibility. *See Smith v. Comm'r Soc. Sec. Admin.*,
20 611 Fed.Appx. 897, 900 (9th Cir. 2015) (affirming the ALJ's adverse credibility
21 determination and noting the ALJ found the claimant's testimony was contradicted
22 by her own description of helping with the "care of children" and household
23 chores); *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (affirming the
24 ALJ's adverse credibility determination and noting the claimant's assertion of
25 disability was undermined by testimony about her daily activities, such as
26 "attending to the needs of her two young children," cooking, and shopping).

27 ///

28 ///

1 In any event, even if the Court found the ALJ erred by failing to identify
 2 how Plaintiff's activities specifically undermined her subjective complaints, the
 3 ALJ, as described above, provided other clear and convincing reasons for
 4 discrediting Plaintiff's testimony, rendering any error harmless. *See Carmickle v.*
 5 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1160, 1163 (9th Cir. 2008) (upholding
 6 adverse credibility finding where ALJ provided four reasons to discredit claimant,
 7 two of which were invalid); *Batson*, 359 F.3d at 1197 (affirming credibility finding
 8 where one of several reasons was unsupported by the record); *Tommasetti*, 533
 9 F.3d at 1038 (An error is harmless when "it is clear from the record that the . . .
 10 error was inconsequential to the ultimate nondisability determination."). An ALJ's
 11 decision will not be reversed for errors that are harmless. *Burch*, 400 F.3d at 679.

12 The ALJ is responsible for reviewing the evidence and resolving conflicts or
 13 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
 14 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
 15 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
 16 determining whether the ALJ's decision is supported by substantial evidence and
 17 may not substitute its own judgment for that of the ALJ even if it might justifiably
 18 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After
 19 reviewing the record, the Court finds the ALJ provided clear and convincing
 20 reasons, which are fully supported by the record, for finding Plaintiff's symptom
 21 allegations were not entirely credible in this case. The ALJ did not err in this
 22 regard.

23 CONCLUSION

24 Having reviewed the record and the ALJ's findings, the Court finds the
 25 ALJ's decision should be affirmed. Therefore, **IT IS HEREBY ORDERED:**

26 1. Defendant's Motion for Summary Judgment, **ECF No. 13**, is
 27 **GRANTED.**

28 ///

1 2. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.
2 **IT IS SO ORDERED.** The District Court Executive is directed to file this
3 Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall
4 be entered for Defendant and the file shall be **CLOSED**.

5 DATED June 15, 2020.

A handwritten signature in black ink, appearing to be "M" or "Rodgers", is written above a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE